

The 12th October, 1971

No. 11274 4Lab-71/33692.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s National Woollen and Finishing Works, Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 128 of 1971

between

THE WORKMAN SHRI BRIJ MOHAN C/O INDUSTRIAL WORKERS UNION, PANIPAT AND
THE MANAGEMENT OF M/S NATIONAL WOOLLEN AND FINISHING WORKS, PANIPAT

Present.—

Shri Brij Mohan, workman.

Shri J. P. Lamba, for the management.

AWARD

The Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication.— vide Government Gazette notification No. ID/KNL/153-A/, dated 27th July, 1971 :—

Whether the termination of service of Shri Brij Mohan was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties for 16th September, 1971. On the date fixed the workman himself made a statement that he has received Rs 220 and he did not wish to go back into service.

In view of the statement made by the workman, I hold that he is not entitled to any further relief. I give my award accordingly.

No order as to costs.

Dated 23rd September, 1971

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1982, dated Rohtak, the 1st October, 1971

Forwarded (for perusal) to the Secretary to Government, Haryana, Labour and Employment, Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11272-4Lab-71/33693.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 149 of 1970
between

SHRI CHUNI LAL CHHABRA, WORKMAN, 1-549, MODEL TOWN, PANIPAT AND THE
MANAGEMENT OF M/S PANIPAT CO-OPERATIVE SUGAR MILLS LTD, PANIPAT.

Present.—Suri Madhu Sudan Sharan Cowshish, for the workman.

Shri S.L. Gupta, for the management.

AWARD

Shri Chuni Lal Chhabra was serving as a head cashier in Panipat Co-operative Sugar Mills, Panipat. He attained the age of 60 years and was superannuated on 26th March, 1970. The applicant is aggrieved by reason of the termination of his services and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Notification No. ID/KL/13-A-70, dated 2nd September, 1970 :—

Whether the termination of services of Shri Chuni Lal was justified and in order ? If not, to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri O.P. Sharma in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. The applicant submits that when he joined the service of the respondent, there was no condition of retirement at all and in the Certified Standing Orders of the respondent also no age of superannuation is prescribed. According to the applicant the termination of his service was a camouflaged action on the part of the management to oust him from service on account of the active part played by him in the trade union activities. It is submitted that the past conduct and behaviour of the management would prove this contention to the fullest extent. The order of termination is also challenged on the ground that the service has not been terminated by a competent authority and further two references Nos. 16 and 24 were pending in the Industrial Tribunal, Haryana in which the applicant was a workman concerned and his services have been terminated during the pendency of the references without the approval of the Industrial Tribunal.

The management admit that at the time the workman was taken into service no age of superannuation was specified and there is also no provision with regard to superannuation in the Certified Standing Orders. It is, however, submitted that there is a provision with regard to superannuation at the age of 60 years in the recommendations of the Central Wage Board set up for the Sugar Industry and the recommendations of the said wage have been fully implemented by the management. All the workman including the applicant have fully availed of the benefits of the recommendations of the Wage Board and, therefore, the submission of the workman that he has been discriminated against on account of his alleged trade union activities is absolutely incorrect. It is also submitted that the provisions of section 33 of the Industrial Disputes Act, 1947 were not at all applicable in the present case because the service of the applicant automatically stood terminated on his attaining the age of superannuation and no alternation in the condition of his service was brought about by the management and the approval of the Tribunal was, therefore, not at all necessary.

My learned predecessor Shri O.P. Sharma framed the following issues :—

Whether the termination of services of Shri Chuni Lal Chhabra was justified and in order ? If not, to what relief is he entitled ?

No separate issues were framed with regard to the allegations of the workman that the termination of his services was a camouflaged action on the part of the management to oust him from service on account of his alleged trade union activities and that the General Manager was not competent to terminate his services or that the termination of his service was in contravention of section 33 of the Industrial Disputes Act, 1947. The representative of the workmen, however, never made a grievance of the fact either during the trial or arguments that necessary issues have not been framed. His learned representative challenged the action of the management terminating the service of the applicant on all grounds raised or mentioned in the statement of claim on the assumption that all the points raised on behalf of the workmen are covered by the issue as framed by my learned predecessor.

The submission of the learned representative of the workman is that the workman could be superannuated only if a condition to this effect existed in the original letter of appointment or in the Standing Orders of the company and in support of this contention he has relied upon an authority reported in A.I.R. 1959-Bombay-70. It is submitted that even if it is held that the applicant was superannuated in pursuance of the recommendations of the Central Wage Board, it could be done only if it is shown that the employer also accepted this part of the recommendations of the Central Wage Board. In support of this contention reliance is placed upon 1964-FLR-458-Supreme Court and 1960-ILLJ-501. It is submitted that the so-called acceptance of the recommendations of the Wage Board by the management cannot constitute a valid contract binding on the parties and in support of this contention provisions of section 54 of the Contract Act have been referred to and reliance is placed upon 1969-ILLJ-547. It is further contended that the applicant could not be retired by the orders of the General Manager because the power to terminate the service of the workman did not vest with him and reliance was placed upon 1968-ILLJ-571-Supreme Court.

The learned representative of the workman also referred to the evidence produced by him to show that the applicant had been victimised and his services have been terminated in a revengful spirit. It is submitted that the termination of the services of the applicant was also in contravention of section 33 of the Industrial Disputes Act because two references were pending in the Industrial Tribunal at that time and the services were terminated without prior sanction of the Industrial Tribunal. In view of all these reasons it is submitted that the termination of the services of the workman was not in accordance with law. Reliance is placed upon an authority of the Labour

Appellant Tribunal reported in 1957-ILLJ-97, in support of the submission that the normal relief of reinstatement should be allowed to the workman if it is found that his services have been wrongfully terminated.

Although the learned representative of the workman during the course of arguments pressed all the points which have been taken in the statement of claim yet the main point on which emphasis was laid and regarding which evidence has been led is that there was no legally binding settlement between the parties with regard to the recommendations of the Central Wage Board relating to the age of retirement. It is true that there is no formal settlement in the prescribed form under section 12(3) of the Industrial Disputes Act, 1947 but the learned representative of the management has rightly pointed out that the workmen had been agitating for the full implementation of the recommendations of the Central Wage Board and the applicant in his capacity as an office bearer of the union has been submitting notices of demand for this purpose and the Board of Directors in deference to the wishes of the workmen passed a resolution to the effect that the recommendations of the Wage Board would be implemented. In substance this amounts to an agreement which becomes binding on both the parties and no party can now wriggle out of the recommendations of the Wage Board if any specific recommendation does not suit the party concerned. This view is supported by two authorities reported in 1967-ILLJ-714 and 1967-ILLJ-371. The authority reported in 1967-ILLJ-714 relates to the case of workmen of Konkane Colliery and Amalabad Colliery. The original service conditions of the workmen did not provide for the retirement at the age of 55 years. These collieries were taken over by M/s Karamchand Thapar and Brothers Ltd; some time in the year 1954. At that time a dispute arose between the workmen and the new owners about the terms and conditions of service and the service rules which were to apply to the workmen of these two collieries. The workmen served a strike notice containing eight demands. Demand No. 5 was worded as under :—

"That the employees of the above four collieries should not be governed by the service rules of Karamchand Thapar & Bros Ltd. The certified standing orders in force for the colliery should only be followed."

A settlement was arrived at between the parties. Under which demand No. 5 was dropped. On these facts their Lordships of Supreme Court were pleased to hold that the workmen had themselves impliedly agreed to be covered by the service rules of Karamchand Thapar & Bros. and, therefore, the rules relating to retirement would apply to them although there was no condition with regard to the retirement in the original letters of appointment. The case reported in 1967-ILLJ-371 relates to the claim for bonus. The workman had served notice of demand claiming bonus. The demand contained a threat of strike. The proprietrix accepted the liability for the payment of bonus. There was no formal settlement between the parties as envisaged under the Industrial Disputes Act, 1947. Yet it was held that the proprietrix could not back out and was liable to pay bonus. It is thus clearly established that a mere omission to have an agreement in the prescribed form is not fatal in every case.

In order to prove their case the management have filed copies of the representations which had been made by the applicant himself in his capacity as Secretary of the Union. Exhibit M. 1 is the copy of the demand dated 12th June, 1961 made by the applicant requesting for the implementation of the recommendations of the Wage Board. Exhibit M. 6 is another demand for the same purpose. The management have also filed a copy of the letter dated 24th December, 1961 which was addressed by the applicant in his capacity as Secretary of the union and was addressed to the General Manager of the respondent requesting for the implementation of the recommendations of the Wage Board. The Board of Directors passed a resolution No. 3 in their meeting held on 3rd January, 1962 in which the recommendation of the Wage Board were completely adopted and it was decided that the individual cases be examined by a sub-committee and the advice of the Joint Registrar, Co-operative Societies be also obtained. Thus we see that the present case stands on a stronger footing because the recommendations of the Central Wage Board are actually being implemented by the management at the insistent demand of their workmen. At no stage the workmen took up a stand that the recommendations of the Wage Board with regard to the age of superannuation was not acceptable to them and when the Board of Directors passed a resolution that the recommendation of the Wage be implemented, no protest was made by the workman that the provision with regard to the age of superannuation was not acceptable to them. It is, therefore, established that the retrenchment of the applicant was effected bona fide in pursuance of the recommendations of the Wage Board and they are not guilty of any unfair labour practice. A list of the employees who have been retired from March, 1963 onwards has been filled and is marked Exhibit M.W. 1/2. It shows that as many as 14 employees including the applicant have been retired from March, 1968 to September, 1970. Exhibit M.W. 1/5 to Exhibit M.W. 1/8 and Exhibit M.W. 1/10 to Exhibit M.W. 1/12 are the copies of the notices issued to some of the employees intimating to them that they had superannuated. With regard to the persons who have been retained in service even after they had obtained the age of superannuation the management have filed the copies of the letters showing that they had been retained with the express approval of the Registrar, of the Co-operative Societies for specific period and not indefinitely. Exhibit M.W. 1/9 is a copy of the letter dated 29th May, 1970 which is addressed to Dr. Bahadur Chand Sotia by which he has been informed that the Registrar Co-operative Societies had not agreed to his further extension in service. The learned representative of the workman did not challenge the genuineness of these documents and has not been able to cite even a single instance in which any workman has been retained in service as a matter of routine. If the management wanted to retain any workman beyond the age of 60 years then a specific case was made and the approval of the Registrar, Co-operative Societies was taken and extension for a specific period was obtained as permitted by the recommendation of the Wage Board. This conduct on the part of the management clearly shows that no exception have been made in the case of the workman, in the present case as alleged by him and that the clause with regard to retirement is being uniformly applied.

The learned representative of the workman submitted that the subsequent conduct of the parties is wholly irrelevant for the purpose of determining the service conditions which have to be ascertained either from terms of the letter of appointment or the Standing Orders as held in A.I.R. 1959-Bombay-70. The ruling is wholly distinguishable because in this the workmen concerned were not a party to the agreement by which the condition with regard to the age of retirement was incorporated and it was held that the union had not safeguarded the interest of those workmen. In the present case all the workmen without exception had been demanding the implementation of the recommendation of the Central Wage Board and they are actually enjoying all the recommendations of the Wage Board which are favourable to them. It, therefore, does not lie their mouth to say that they are not bound with regard to the recommendation which is not to their liking. The workmen have been seeking the implementation of the recommendation of the Wage Board as a whole and when the management accepted the same then the clause with regard to the age of superannuation has to be given effect to.

It is submitted on behalf of the workman that recommendation of the Wage Board with regard to the house-rent and electricity charges have not been implemented by the management. The management have contested this assertion and maintain that the recommendations with regard to house-rent and electricity charges are being implemented and the accounts books were brought to the Court to show that the house-rent and electricity charges were now being charged as recommended by the Board. The learned representative of the management has also rightly pointed out that if in any case payment has not been made in accordance with the recommendations of the Wage Board then the particular workman who may be aggrieved can enforce his rights and the recommendations of the Wage Board cannot be set at naught if there is a default in any particular case. In my opinion the submission of the learned representative of the management is correct.

There is not the slightest evidence in support of the contention that the termination of the services of the applicant was a camouflaged action on the part of the management to oust him from service on account of the active part played by him in the trade union activities. No evidence has been produced to show that the management had any malice against him. The applicant has produced only 3 witnesses. Shri Tara Chand has been examined as W.W. 1. He simply says that there was no settlement between the parties with regard to the recommendations of the Wage Board relating to retirement. Shri Hazara Singh W.W. 2 was simply tendered for cross-examination and the applicant in his evidence as W.W. 3 makes vague allegations that he was laid off and suspended a number of times with a view to victimise him but no evidence whatsoever has been led to prove that his lay off or suspension was not justified. In my opinion, therefore, it is satisfactorily established that the condition with regard to the age of superannuation was introduced as a result of the recommendations of the Central Wage Board because the workmen demanded the implementation of the recommendations of the Wage Board and the management have agreed to implement the same.

As regards the objection that the General Manager had no authority to terminate the service of the applicant, the learned representative of the management has rightly pointed out that it is a case of automatic termination of the service of the applicant and General Manager simply informed the applicant that he had reached the age of superannuation. Since it is not a case of any premature termination of service, the provision of section 33 of the Industrial Disputes Act, 1947 would also be not applicable. I am therefore, of the opinion that the termination of the applicant was justified and in order and he is not entitled to any relief. I give my award accordingly. There will be no order as to costs.

P. N. THUKRAL,

The 28th September, 1971.

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1921, dated Rohtak, the 29th September, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

B. L. AHUJA,
Commissioner for Labour and Employment,
and Secretary to Government, Haryana
Labour and Employment Departments.

राजस्व विभाग
युद्ध जागीर

दिनांक 8 अक्टूबर, 1971

क्रमांक 776-ज(II)-71/30970.—पूर्वी पंजाब के युद्ध पुरस्कार अधिनियम, 1948 (जैसा कि उसमें आज तक हरियाणा सरकार द्वारा संशोधन किया गया है) की धारा 2 (ए) (1ए) तथा 3 (1ए) के अनुसार सौंपे गए अधिकारों का प्रयोग करते हुए हरियाणा के राज्यपाल श्रीमती धन्नी देवी, विधवा श्री रिद्धपाल, गांव खवदामपुर, तहसील व जिला गुड़गांव को खरीफ, 1965 से रबी, 1970 तक 100 रुपए और खरीफ, 1970 से आगे 150 रुपये वार्षिक कीमत वाली युद्ध जागीर सनद में दी गई शर्तों के अनुसार सहर्ष प्रदान करते हैं।